

58
1896
Sup Court

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 191. 201.

ALFRED V. BOOTH, PLAINTIFF IN ERROR,

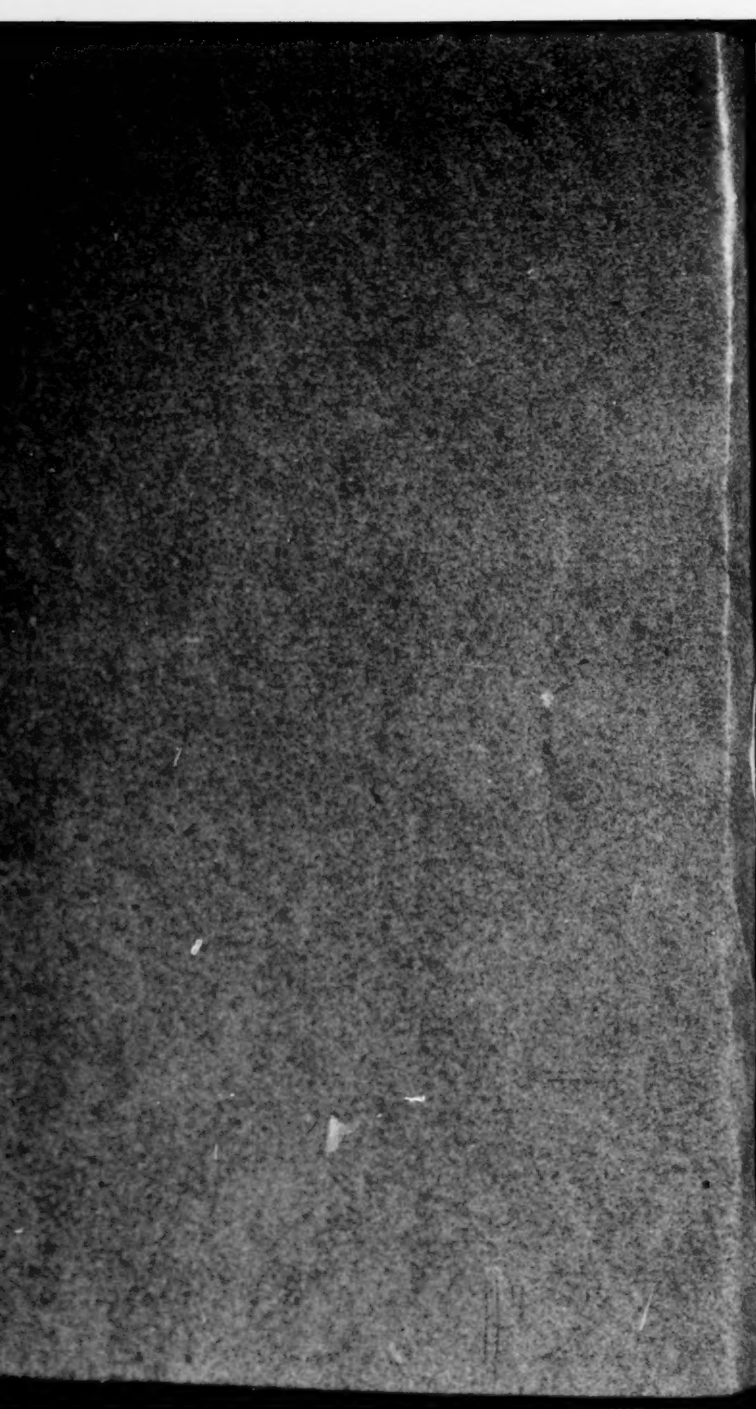
vs.

THE PEOPLE OF THE STATE OF ILLINOIS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

FILED NOVEMBER 28, 1900.

(17,979.)



(17,979.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 494.

ALFRED V. BOOTH, PLAINTIFF IN ERROR,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

INDEX.

	Original. Print.	
Writ of error.....	a	1
Clerk's certificate as to copy of writ of error.....	c	2
Citation.....	d	2
Acceptance of service of citation.....	e	2
Clerk's acceptance as to copy of citation.....	f	2
Clerk's certificate and return to writ of error.....	g	3
Caption	1	3
Transcript from criminal court of Cook county.	2	4
Caption	2	4
Order to summon grand jurors.....	2	4
Grand jury.....	4	5
Indictment.....	6	6
Order for writ of <i>capias</i>	15	8
Writ of <i>capias</i> and return.....	16	8
Order fixing amount of bail.....	18	9
Recognizance.....	19	10
Order beginning hearing.....	21	11
Motion to quash overruled	22	11
Arraignment and plea	22	11
Waiver of jury trial.....	22	11
Order overruling motion for new trial.....	23	12
Order overruling motion in arrest of judgment	23	12

	Original.	Print
Judgment.....	24	12
Allowance of appeal.....	24	12
Bill of exceptions.....	26	13
Motion to quash indictment.....	26	13
Testimony of Henry L. Foster.....	29	15
John J. Carmody.....	32	17
Homer H. Peters.....	33	18
Wm. S. Crosby.....	41	22
Defendant's requests.....	45	25
Refusal of defendant's requests.....	47	26
Motion for new trial.....	50	27
Motion in arrest of judgment.....	51	28
Judge's certificate to bill of exceptions.....	53	29
Clerk's certificate.....	54	29
Assignment of errors.....	55	29
Order taking cause under advisement.....	62	33
Order extending time to file briefs.....	63	33
Judgment.....	64	34
Opinion.....	65	34
Petition for writ of error.....	75	39
Bond on writ of error.....	77	39
Assignment of errors.....	78	40

a UNITED STATES OF AMERICA, 88 :

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the supreme court of the State of Illinois, Greeting :

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Illinois, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Alfred V. Booth, plaintiff in error, and The People of the State of Illinois, defendants in error, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was

b drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Alfred V. Booth, plaintiff in error, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within thirty days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the seventeenth day of October, in the year of our Lord one thousand nine hundred.

JAMES H. MCKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—

BROWN,

*Associate Justice of the Supreme
Court of the United States.*

c

In the Supreme Court of Illinois.

ALFRED V. BOOTH	}	1341. Error to Criminal Court, Cook.
vs.		
THE PEOPLE OF THE STATE OF ILLINOIS.	}	

I, Christopher Mamer, clerk of said supreme court, do hereby certify that on the twenty-second day of October, in the year of our Lord one thousand nine hundred, a copy of the foregoing writ of error for the defendants in error was lodged in my office, at Springfield, Illinois.

Witness my hand and the seal of said court this 22nd day of October, A. D. 1900.

CHRISTOPHER MAMER,
Clerk of Supreme Court.

{ Ten-cent United States internal-revenue stamp, }
canceled 10, 22, '00. C. M.]

d UNITED STATES OF AMERICA, ss:

To the People of the State of Illinois, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Illinois, wherein Alfred V. Booth is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Henry B. Brown, associate justice of the Supreme Court of the United States, this seventeenth day of October, in the year of our Lord one thousand nine hundred.

HENRY B. BROWN,
Associate Justice of the Supreme Court of the United States.

e I accept service of within citation this 24 day of October, 1900.

E. C. AKIN,
Att'y Gen'l of Illinois.

f

In the Supreme Court of Illinois.

ALFRED V. BOOTH	}	1341. Error to Criminal Court, Cook.
vs.		
THE PEOPLE OF THE STATE OF ILLINOIS.	}	

I, Christopher Mamer, clerk of said supreme court, do hereby certify that on the twenty-second day of October, in the year of our Lord one thousand nine hundred, a copy of the foregoing citation was lodged in my office at Springfield, Illinois.

Witness my hand and the seal of said court this 22nd day of October, A. D. 1900.

CHRISTOPHER MAMER,
Clerk of Supreme Court.

{ Ten-cent United States internal-revenue stamp, }
canceled 10, 22, '00. C. M. }

g In the Supreme Court of Illinois.

ALFRED V. BOOTH

vs.

THE PEOPLE OF THE STATE OF ILLINOIS.

{ 1341. Error to Criminal
Court, Cook. }

I, Christopher Mamer, clerk of the supreme court of Illinois, elected for the northern grand division, and keeper of the records and files thereof, by virtue of the foregoing writ of error and in obedience thereto, do hereby certify that the following papers, numbered from one (1) to seventy-nine (79), inclusive, contain a true and complete transcript and copy of the record and proceedings had in said court in the case which is above entitled, and of the whole thereof, including the opinion of the court, as the same remain of record and on file in my said office.

In testimony whereof I have hereunto set my hand and caused the seal of said supreme court of Illinois to be hereunto affixed, at Springfield, this 22nd day of October, in the year of our Lord one thousand nine hundred.

CHRISTOPHER MAMER,
Clerk of Supreme Court.

{ Ten-cent United States internal-revenue stamp, }
canceled 10, 22, '00. C. M. }

1 At a supreme court begun and held at Springfield, on Tuesday, the third day of April, in the year of our Lord one thousand nine hundred, within and for the State of Illinois.

Present: James H. Cartwright, chief justice; Alfred M. Craig, justice; Benjamin D. Magruder, justice; Jacob W. Wilkin, justice; Jesse J. Phillips, justice; Joseph N. Carter, justice; Carroll C. Boggs, justice; Edward C. Akin, attorney general; Charles M. Woods, sheriff.

Attest:

CHRISTOPHER MAMER, *Clerk.*

Be it remembered that afterwards, to wit, on the third day of April, A. D. 1900, there was filed in the office of the clerk of said court a certain transcript of the record and proceedings of the criminal court of Cook county; which said transcript is in the words and figures following, viz:

UNITED STATES OF AMERICA.

STATE OF ILLINOIS, } ss :
 Cook County,

Pleas before a branch of the criminal court of Cook county, in said county and State, at a term thereof begun and held at the criminal court house, in the city of Chicago, in said county, on the first Tuesday (being the second day) of January, in the year of our Lord one thousand nine hundred, and of the Independence of the United States the one hundred and twenty-fourth.

Present: Honorable Jonas Hutchinson, judge of the superior court of Cook county and *ex officio* judge of the criminal court of Cook county; Charles S. Denceen, State's attorney; Ernest J. Magerstadt, sheriff of Cook county.

Attest: PATRICK J. CAHILL, *Clerk*.

Be it remembered, to wit, on the second day of January, in the year last aforesaid, it being the term of court aforesaid, the following, among other, proceedings were had and entered of record in said court; which said proceedings are in the words and figures following, to wit:

It appearing to the court that public justice requires that a grand jury be selected and summoned for the next term of this court in accordance with the statute in such case made and provided,
 3 the *the* court of its own motion doth order that the jury commissioners of Cook county do, at least twenty days before the first day of the next term of this court, select forty persons possessing the qualifications of jurors required by law to serve as grand jurors at said term, and that said commissioners shall, within five days after such selection, certify the person- so selected as grand jurors to the clerk of this court, who shall issue and deliver to the sheriff of Cook county, at least ten days before the next term of this court, a summons commanding said sheriff to summon the persons so selected, as aforesaid, to appear before this court at the hour of ten o'clock on the third Monday of the next term hereof, to constitute a grand jury for such term.

It is further ordered by the court that the clerk of this court transmit a certified copy of this order to said jury commissioners forthwith.

4

UNITED STATES OF AMERICA.

STATE OF ILLINOIS, }
 Cook County, } ss :

Pleas before a branch of the criminal court of Cook county, in said county and State, at a term thereof begun and held at the criminal court house, in the city of Chicago, in said county, on the first Monday (being the fifth day) of February, in the year of our Lord one thousand nine hundred, and of the Independence of the United States the one hundred and twenty-fourth.

Present: Honorable Frank Baker, judge of the circuit court of Cook county and *ex officio* judge of the criminal court of Cook county; Charles S. Denceen, State's attorney; Ernest J. Magerstadt, sheriff of Cook county.

Attest: PATRICK J. CAHILL, *Clerk*.

And afterwards, to wit, on the 19th day of February, in the year last aforesaid, it being the term of court aforesaid, the following, among other, proceedings were had and entered of record in said court; which said proceedings are in the words and figures following, to wit:

The sheriff of Cook county returned into court the *venire facias* heretofore issued for a grand jury for this term and returnable today, by which it appears that the following-named persons have been duly summoned to appear this day and serve as grand jurors at the present term of this court:

5 Robert H. Bulkley, William L. Exley, Augustus R. Beard, W. W. McFarland, Mac R. Fife, Edward P. King, Eugene N. Carter, John W. Low, Wm. H. T. Collins, Stanley Flutwood, Arthur C. Hutchinson, William S. Gilbreath, David K. Hill, Jas. T. Quinn, Harry Cook, John F. Joyce, Edward H. Foreman, Jas. C. Lynch, Frederick C. Vass, Andrew Jaicks, Herbert R. Lloyd, Frank L. Eastman, Joseph Easthope; who answered to their respective names. The panel of grand jurors being now filled, the court having now here appointed David K. Hill, Esquire, foreman of said grand jury, the grand jurors aforesaid were duly sworn and charged by the court, and thereupon retire to consider of their presentment.

6 And afterwards, to wit, on the 3rd day of March, in the year last aforesaid, it being the term of court aforesaid, the following, among other, proceedings were had and entered of record in said court; which said proceedings are in the words and figures following, to wit:

The grand jury came into open court and made a presentment, endorsed "A true bill," in the following-entitled cause, to wit:

THE PEOPLE OF THE STATE OF ILLINOIS } 58013. Indictment for
 vs. } Contract to Give Him-
 ALFRED V. BOOTH. } self an Option, etc.

7 STATE OF ILLINOIS, } ss:
 County of Cook, }

Of the February term of the criminal court of Cook county, in said county and State, in the year of our Lord one thousand nine hundred.

The grand jurors chosen, selected, and sworn in and for the county of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that Alfred V. Booth, late of the county of Cook, on the sixteenth day of August, in the year of our Lord one thousand eight hundred and ninety-nine, in said county of Cook, in the State of Illinois aforesaid, unlawfully did contract to have to himself the option to buy at a future time certain commodity, to wit, grain, contrary to the statute and against the peace and dignity of the same People of the State of Illinois.

8 The grand jurors aforesaid, chosen, selected, and sworn in and for the county of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths aforesaid do further present that Alfred V. Booth, late of the county of Cook, on the sixteenth day of August, in the year of our Lord one thousand eight hundred and ninety-nine, in said county of Cook, in the State of Illinois aforesaid, unlawfully did contract to have to himself the option to buy at a future time a certain commodity, to wit, grain, to wit, ten thousand bushels of corn, contrary to the statute and against the peace and dignity of the same People of the State of Illinois.

9 The grand jurors aforesaid, chosen, selected, and sworn in and for the county of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths aforesaid do further present that Alfred V. Booth, late of the county of Cook, on the sixteenth day of August, in the year of our Lord one thousand eight hundred and ninety-nine, in said county of Cook, in the State of Illinois aforesaid, unlawfully did contract to give to himself the option to buy at a future time certain commodity, to wit, grain, contrary to the statute and against the peace and dignity of the same People of the State of Illinois.

10 The grand jurors aforesaid, chosen, selected, and sworn in and for the county of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths aforesaid do further present that Alfred V. Booth, late of the county of Cook, on the sixteenth day of August, in the year of our Lord one thousand eight hundred and ninety-nine, in said county of Cook, in the State of Illinois aforesaid, unlawfully did contract to give to him to himself the option to buy at a future time certain commodity, to wit, grain, to wit, ten thousand bushels

of corn, contrary to the statute and against the peace and dignity of the same People of the State of Illinois.

11 The grand jurors aforesaid, chosen, selected, and sworn in and for the county of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths aforesaid do further present that Alfred V. Booth, late of the county of Cook, on the sixteenth day of August, in the year of our Lord one thousand eight hundred and ninety-nine, in said county of Cook, in the State of Illinois aforesaid, unlawfully did contract with Weare Commission Company, a corporation, to give to himself, to wit, to said Alfred V. Booth, an option, to wit, preference to buy at a future time certain commodity, to wit, grain, to wit, ten thousand bushels of corn, contrary to the statute and against the peace and dignity of the same People of the State of Illinois.

12 The grand jurors chosen, selected, and sworn in and for the county of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that Alfred V. Booth, late of the county of Cook, on the sixteenth day of August, in the year of our Lord one thousand eight hundred and ninety-nine, in said county of Cook, in the State of Illinois aforesaid, unlawfully did contract in writing with Weare Commission Company, a corporation, to then and there have to himself, to wit, to said Alfred V. Booth, a certain option to buy at a future time, to wit, on or before the twenty-sixth day of August, in the year of our Lord one thousand eight hundred and ninety-nine, a certain commodity, to wit, grain, to wit, ten thousand bushels of corn, from the said Weare Commission Company, a corporation, as aforesaid; which said contract is in the words and figures as follows, to wit:

B. "Alfred V. Booth, grain and provision broker.

10 Weare Com. Co. CHICAGO, August 16, 1899.

Sep. corn, 1899. C., 31½. Paid.

Good till close of 'change, Sat., Aug. 26, 1899.

WEARE C. CO.
J. J. C."

contrary to the statute and against the peace and dignity of the same People of the State of Illinois.

13 The grand jurors chosen, selected, and sworn in and for the county of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that Alfred V. Booth, late of the county of Cook, on the sixteenth day of August, in the year of our Lord one thousand eight hundred and ninety-nine, in said county of Cook, in the State of Illinois aforesaid, unlawfully did contract in writing with Weare Commission Company, a corporation, to then and there give to himself, to wit, to said Alfred V. Booth, a certain option to buy at a future time, to wit, on or before the twenty-sixth day of August, in the year of our Lord one thousand eight hundred and ninety-nine,

a certain commodity, to wit, grain, to wit, ten thousand bushels of corn, from the said Weare Commission Company, a corporation, as aforesaid, *as foresaid*; which said contract is in the words and figures as follows, to wit:

B. "Alfred V. Booth, grain and provision broker.

10 Weare Com Co.

CHICAGO, Aug. 16, 1899.

Sept. com, 1899. C., 31½. Paid.

Good till close of 'change, Sat., Aug 26, 1899.

WEARE C. CO.
J. J. C."

contrary to the statute and against the peace and dignity of the same People of the State of Illinois.

CHARLES S. DENEEN,
State's Attorney.

14 Term No., 3221; No. 58013. Copy. Criminal court of Cook county, February term, 1900. The People of the State of Illinois vs. Alfred V. Booth. Indictment for contract to give himself an option, &c. A true bill. David K. Hill, foreman of the grand jury. Witnesses, John C. Carmody, Henry L. Foster, W. E. Cayler. Filed March 3, 1900. Patrick J. Cahill, clerk. Bail, \$1,000.

15 And afterwards, to wit, on the 3rd day of March, in the year last aforesaid, it being the term of court aforesaid, the following, among other, proceedings were had and entered of record in said court; which said proceedings are in the words and figures following, to wit:

THE PEOPLE OF THE STATE OF ILLINOIS	} 58013. Indictment for
vs.	
ALFRED V. BOOTH.	} Contract to Give Him- self an Option, etc

Whereupon it is ordered that the People's writ of capias issue against the body of said defendant in the above-entitled cause, returnable forthwith.

16 *Forthwith Capias.*

STATE OF ILLINOIS, }
Cook County, } ss:

The People of the State of Illinois to the sheriff of said county, Greeting:

We command you that you take the body of Alfred V. Booth, if to be found in your county, and safely him keep so that you have him before our criminal court of Cook county forthwith to answer unto the People of the State of Illinois upon an indictment for contracting to give himself an option to buy at a future time grain, lately preferred against him by the grand jury of said court.

And have you then and there this writ.

[SEAL.] Witness Patrick J. Cahill, clerk of our said court, and the seal thereof, at Chicago, in said county, this 3rd day of March, A. D. 1900.

PATRICK J. CAHILL, *Clerk*.

17 Term No., 3221; term, 58013. Criminal court of Cook county, February term, A. D. 1900. Forthwith capias. The People of the State of Illinois *versus* Alfred V. Booth.

Executed this writ by arresting the within-named Alfred V. Booth and bringing his body into court this 5th day of March, A. D. 1900.

Fees.

Arrest.....	\$2.00
Mileage.....	1.00
Return.....	.10
Total	8

ERNEST J. MAGERSTADT, *Sheriff*,
By JOHN A. KING, *Deputy*.

Bail, \$1,000.

Received from the clerk at — o'clock — m., March 5, 1900.

ERNEST J. MAGERSTADT, *Sheriff*.

18 And afterwards, to wit, on the 3rd day of March, in the year last aforesaid, it being the term of court aforesaid, the following, among other, proceedings were had and entered of record in said court; which said proceedings are in the words and figures following, to wit:

THE PEOPLE OF THE STATE OF ILLINOIS	} 58013. Indictment for
vs	
ALFRED V. BOOTH.	Contract to Give Him- self an Option, etc.

On motion of Charles S. Deneen, State's attorney, it is ordered that the said defendant be held to bail in the penal sum of one thousand dollars, with good and sufficient sureties, to be approved by this court, and in default thereof he be remanded into the custody of the sheriff of Cook county.

STATE OF ILLINOIS, }
 Cook County, } ss:

Pleas before a branch of the criminal court of Cook county, in said county and State, at a term thereof begun and held at the criminal court house, in the city of Chicago, in said county, on the first Monday (being the fifth day) of March, in the year of our Lord one thousand nine hundred, and of the Independence of the United States the one hundred and twenty-fourth.

Present: Honorable Axel Chyrens, judge of the superior court of Cook county and *ex officio* judge of the criminal court of Cook county; Charles S. Deneen, State's attorney; Ernest J. Magerstadt, sheriff of Cook county.

Attest: PATRICK J. CAHILL, Clerk.

Be it remembered, to wit, on the fifth day of March, in the year last aforesaid, it being the term of court aforesaid, the following, among other, proceedings were had and entered of record in said court; which said proceedings are in the words and figures following, to wit:

THE PEOPLE OF THE STATE OF ILLINOIS	}	No. 58013. Recognizance.
vs.		
ALFRED V. BOOTH, JOHN ROBSON, LEE D. Mathias.		

20 This day come Alfred V. Booth, as principal, and John Robson and Lee D. Mathias, as sureties, and severally acknowledged themselves to owe and be indebted unto the People of the State of Illinois in the penal sum of one thousand dollars, to be levied of their goods and chattels, lands and tenements, respectively; yet to be void on the condition that the said Alfred V. Booth shall personally be and appear before the criminal court of Cook county, now in session, on the 6th day of March, A. D. 1900, and from day to day and from term to term and from day to day of each term until the final sentence or order of said court, to answer unto the People of the State of Illinois upon an indictment for contract to give himself an option, etc., now pending in said court against him, and abide the order of said court and not depart the same without leave; otherwise to be and remain in full force and effect.

21

UNITED STATES OF AMERICA.

STATE OF ILLINOIS, } ss:
 Cook County, }

Pleas before a branch of the criminal court of Cook county, in said county and State, at a term thereof begun and held at the criminal court house, in the city of Chicago, in said county, on the first Monday (being the sixth day) of March, in the year of our Lord one thousand nine hundred, and of the Independence of the United States the one hundred and twenty-fourth.

Present: Honorable Arba N. Waterman, judge of the circuit court of Cook county and *ex officio* judge of the criminal court of Cook county; Charles S. Deneen, State's attorney; Ernest J. Magerstadt, sheriff of Cook county.

Attest: PATRICK J. CAHILL, Clerk.

And afterwards, to wit, on the 16th day of March, in the year last aforesaid, it being the term of court aforesaid, the following, among other, proceedings were had and entered of record in said court; which said proceedings are in the words and figures following, to wit:

THE PEOPLE OF THE STATE OF ILLINOIS } 58013. Indictment for
 vs. }
 ALFRED V. BOOTH. } Contract to Give Him-
 } self an Option, etc.

This day come the said People, by Charles S. Deneen, State's attorney; and the said defendant, as well in his own proper person as by his counsel, also comes; and counsel for said defendant
 22 now here moves the court to quash the indictment in this cause.

And the court, hearing counsel in support of the motion as well as in opposition thereto and being fully advised in the premises, doth overrule said motion and order that said motion to quash the indictment in this cause be, and the same is hereby, overruled accordingly.

To which order of the court in overruling said motion the said defendant, by his counsel, now here excepts.

And he having been furnished with a copy of the indictment in this cause and lists of the names of the witnesses and jurors, and he being now here duly arraigned and forthwith demanded of and concerning the crime alleged against him in said indictment, how he will acquit himself thereof, for a plea in that behalf says that he is not guilty in manner and form as charged therein; and of this he puts himself upon the county; and the said People do the like.

And now, issue being joined, the said defendant and his counsel now here propose to waive the intervention of a jury and submit this cause to the court for trial.

And the court having fully advised the said defendant of his right to a trial by a jury, he still adheres to his proposition to waive said

right; and, by agreement of the State's attorney and the said defendant and his counsel, this cause is submitted to the court for trial and the intervention of a jury waived.

And, the court hearing testimony of witnesses, it is ordered that the further consideration of this cause be, and the same is hereby, postponed.

23 And afterwards, to wit, on the 26th day of March, in the year last aforesaid, it being the term of court aforesaid, the following, among other, proceedings were had and entered of record in said court; which said proceedings are in the words and figures following, to wit:

THE PEOPLE OF THE STATE OF ILLINOIS	} 58013. Indictment for
VS.	
ALFRED V. BOOTH.	

This day come the said People, by Charles S. Deneen, State's attorney, and the said defendant, as well in his own proper person as by his counsel, also comes.

And the court, hearing the arguments of counsel and being now fully advised in the premises, doth find the said defendant guilty.

And counsel for said defendant now here moves the court for a new trial in this cause.

And the court, hearing counsel in support of said motion, as well as in opposition thereto, and being now fully advised in the premises, doth overrule said motion, and order that the motion for a new trial in this cause be, and the same is hereby, overruled accordingly.

To which order of the court in overruling said motion the said defendant, by his counsel, now here excepts.

And counsel for said defendant now here moves the court in arrest of judgment in this cause.

And the court, hearing counsel in support of said motion, as well as in opposition thereto, and being fully advised in the premises, doth overrule said motion, and orders that said motion in arrest of judgment be, and the same is hereby, overruled accordingly; to which order of the court in overruling said motion the said defendant, by his counsel, now here excepts.

And now neither the said defendant nor his counsel for him saying anything further why the judgment of the court should not be pronounced against him on the finding of guilty heretofore rendered to the indictment in this cause—

Therefore it is ordered and adjudged by the court that the said defendant be fined in the sum of one hundred dollars and pay all the costs of these proceedings.

To which order and judgment of the court the said defendant, by his counsel, now here excepts, and prays an appeal to the supreme court of the northern grand division of Illinois, which is granted upon the condition that the said defendant doth within thirty days from date file an appeal bond in the penal sum of four hundred dollars, with sureties to be approved by this court, and also doth

within thirty days from date prepare and file his bill of exceptions in this cause.

25 And afterwards, to wit, on the 31st day of March, in the year last aforesaid, it being the term of court aforesaid, there was filed in the office of the clerk of the criminal court of Cook county a certain bill of exceptions; which said bill of exceptions is in the words and figures following, to wit:

26 STATE OF ILLINOIS, }
County of Cook, } ss.:

In the Criminal Court of Cook County.

THE PEOPLE OF THE STATE OF ILLINOIS }
vs. } 3221.
ALFRED V. BOOTH.

Bill of Exceptions.

Be it remembered that heretofore, to wit, upon the sixteenth day of March, A. D. 1900, the above-entitled cause came on for trial before Honorable Arba N. Waterman, one of the judges of said court, a jury being expressly waived in writing by the defendant, and the cause submitted to the court.

Messrs. Howard O. Sprogle and W. E. Caylor appearing as attorneys on behalf of the People; Lee D. Mathias, Esq., appearing as attorney on behalf of the defendant.

Whereupon the defendant, by his counsel, moved in writing to quash the indictment herein in the words and figures as follows, to wit:

STATE OF ILLINOIS, }
County of Cook, } ss.:

In the Criminal Court of Cook County.

STATE OF ILLINOIS }
vs. }
ALFRED V. BOOTH.

27 Comes now the defendant, by Lee D. Mathias, his attorney, and moves to quash the first, second, third, fourth, fifth, sixth, and seventh counts of the indictment against the said defendant herein and each and every count thereof, both separately and severally, for the following reasons, to wit:

1. That the said counts or any of them charge no offense against the peace and dignity of the People of the State of Illinois.

2. That the said counts or any of them charge no offense contrary to the statute.

3. That the said counts or any of them charge no offense contrary to the statute and against the peace and dignity of the People of the State of Illinois.

4. That the statute, to wit, section 130 of the Criminal Code, in so far as it provides that "whoever contracts to have or give to himself or another the option to sell or buy at a future time grain or other commodity, stock of any railroad, or other company, or gold * * * shall be fined not less than \$10 nor more than \$1,000, or confined in the county jail not exceeding one year, or both, and all contracts made in violation of this section shall be considered gambling contracts, and shall be void," upon which said section each and all of the aforesaid counts of the said indictment are based, is unconstitutional and void, being in contravention of section 2, article 2, of the constitution of the State of Illinois, which provides that "no person shall be deprived of life, liberty, or property without due process of law."

5. That the statute, to wit, section 130 of the Criminal Code, 28 in so far as it provides that "whoever contracts to have or give to himself or another the option to sell or buy at a future time any grain or other commodity, stock of any railroad, or other company, or gold * * * shall be fined not less than \$10 nor more than \$1,000, or confined in the county jail not exceeding one year, or both, and all contracts made in violation of this section shall be considered gambling contracts and shall be void," upon which said section each and all of the aforesaid counts of the said indictment are based, is unconstitutional and void, being in contravention of section 1, article 14, of the articles in addition to and amendment of the Constitution of the United States of America in so far as it provides, "nor shall any State deprive any person of life, liberty or property without due process of law."

6. That the statute, to wit, section 130 of the Criminal Code, in so far as it provides that "whoever contracts to have or give to himself or another the option to sell or buy at a future time any grain or other commodity, stock of any railroad or other company, or gold * * * shall be fined not less than \$10 nor more than \$1,000, or confined in the county jail not exceeding one year or both, and all contracts made in violation of this section shall be considered gambling contracts and shall be void," upon which said section each and all of the aforesaid counts of the said indictment are based, is unconstitutional and void, being in contravention of section 1, article 14, of the articles in addition to and amendment of the Constitution of the United States of America in so far as it provides that no State shall "deny to any person within its jurisdiction the equal protection of the laws."

7. That the court has no jurisdiction herein.

29

LEE D. MATHIAS,
Attorney for Defendant.

Which motion the court then and there overruled; to which ruling of the court the defendant, by his counsel, then and there duly excepted.

Whereupon the defendant was arraigned and pleaded not guilty.

Whereupon the People, to maintain the issue upon their part, by their counsel, introduced the following evidence:

HENRY L. FOSTER, produced as a witness on behalf of the People, having first been duly sworn, testified as follows:

My name is Henry L. Foster, and I reside at 437 Center street, Chicago, Illinois. I am acquainted with the defendant, Alfred V. Booth, and have known him about six years. I know his handwriting.

Whereupon Mr. Caylor asked the witness to describe a call, and the witness answered:

A man who buys a call pays a specific sum of money for the privilege of buying certain described goods, as agreed upon between buyer and seller, during the pendency of a certain time or at its conclusion at a certain price.

Q. Now, what is a put?

A. A put is the reverse of it—that is, a man who buys a put buys a privilege to deliver goods, also at a certain price, during the pendency or at the conclusion of a certain time.

(By the COURT:)

Q. A straddle is both of these things together, isn't it?

A. Well, your honor, I never dealt in one and I never saw
30 one dealt in, and I would rather not endeavor to define it.

Whereupon Mr. Sprogle asked the witness the following question:

Q. Mr. Foster, what is that card (handing card to witness)?

A. That card, sir, is a contract between an unnamed buyer and the Weare Commission Company by which the buyer received from them the privilege of calling 10,000 bushels of corn at 31½ cents at any time between the date of August 16th and August 26th, terminating August 26th.

Q. Do you recognize the handwriting of anybody on that card?

A. I do, sir.

Q. Whose?

A. Mr. Booth's.

(By the COURT:)

Q. That is the defendant?

A. That is the defendant.

Q. You are a member of the board of trade?

A. Yes, sir.

Q. And you understand what the marks and figures on this card here signify?

A. Yes, sir.

Q. And you have stated what they signify?

A. A positive call contract for a call. The C. itself, if you will allow me to show it to you, means call.

Q. Yes; I understand.

A. Ten means 10,000. The Weare Commission Company is the house that sold it.

Q. Yes.

A. Call, 31½ for cents, good in Chicago, August 16th to August 26th.

Q. Now, where is the signature?

A. The signature? There it is, accepted by the Weare Commission Company.

Q. That is the signature of whom?

A. That is the signature of Mr. Carmody.

31 Whereupon Mr. Sprogle introduced the said card in evidence; which said card is hereto attached, marked Exhibit A, and made a part thereof:

Ex. A.

B. Al. V. Booth, grain and provision broker.

10 Weare Com. Co.

CHICAGO, Aug. 16, 1899.

Sep. corn, 1899. C., 31½. Paid.

Good till close of 'change, Sat., Aug. 26, 1899.

WEARE C. CO.
J. J. C.

Cross-examination by Mr. MATHIAS:

Q. If I understand you correctly, Mr. Foster, this card represents an agreement whereby the Weare Commission Company offers to sell to Mr. Booth 10,000 bushels of corn, at 31½ cents a bushel, and agrees to give him ten days within which to accept the offer. Am I correct?

A. That is correct.

Whereupon Mr. Sprogle asked the following question:

Q. Isn't this what determines, Mr. Foster, that it gives to the Weare Commission Company an option to take within ten days 10,000 bushels of corn at 31½ cents a bushel?

A. No, sir. Allow me to state it as tersely as I may. For the consideration of \$12.50 they give that privilege to the other man. He has the privilege to ask them to sell him that corn at 31½ cents a bushel at any time during the pendency of that option, or at its close. He may take it or not. Hence the term privilege.

32

(By Mr. MATHIAS:)

Q. In a transaction of this kind the money is paid in consideration of the party leaving the offer to sell open for the given time?

A. Yes, sir.

Whereupon the witness was excused.

JOHN J. CARMODY, produced as a witness on behalf of the People, having been first duly sworn, testified as follows:

My name is John J. Carmody. I am a trader, a broker on the board of trade, and I am employed by the Weare Commission Company.

Whereupon the witness was asked the following question:-

Q. Do you know this card? What is it (indicating the card introduced in evidence during Mr. Foster's examination)?

A. Yes, sir. Well, it is ten calls sold to Mr. Al. V. Booth on September corn at $31\frac{1}{2}$ cents, good until August 26th.

Q. Did you make that deal with Al. V. Booth?

A. Yes, sir.

Q. Was the money paid?

A. Yes, sir.

Q. And to whom?

A. It was paid to me by Mr. Booth at the board of trade in the city of Chicago, Cook county, Illinois. That card is known as a trading card.

Cross-examination by Mr. MATHIAS:

Q. As I understand your testimony, you agreed to sell Mr. Booth 10,000 bushels of corn at $31\frac{1}{2}$ cents a bushel on August 16th, 1899, and he paid you \$10, the consideration for your leaving the offer open for ten days; is that correct?

A. Yes, sir; that is correct.

33 Q. I mean by "you" the Weare Commission Company.

A. Yes, sir; that is right. The Weare Commission Company is a corporation.

Q. The grain was delivered upon this option, was it not?

A. 5,000 of it was delivered and 5,000 settled through the clearing-house.

Q. Did Mr. Booth elect to or did Mr. Booth avail himself of the option on the date of this contract or thereafter?

A. He did thereafter. The date I do not know. He called the grain.

(By Mr. SPROGLE:) Then you sold an option to Mr. Booth to buy 10,000 bushels of corn at $31\frac{1}{2}$ cents, that option to be exercised within ten days from the date of this deal—the date of this card?

(The COURT:)

Q. By "you" you mean the Weare Commission Company?

A. Yes.

Q. He had the privilege of buying or not buying to be exercised within ten days?

— Yes.

Q. And that was this deal?

A. Yes.

(Mr. SPROGLE:) That is all; we rest.

Whereupon the defendant, to maintain the issue upon his part, by his counsel, introduced the following evidence:

HOMER H. PETERS, produced as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

Direct examination by Mr. MATHIAS:

Q. State your name.

A. My name is Homer H. Peters; I reside in the city of Chicago. I am a grain merchant and a member of the firm of Bartlett, Frazier & Company, and have been a member of the
34 board of trade for eleven years, and have been actively engaged in business on the board of trade during that time; I mean the Chicago board of trade. The business of our firm is principally that of shipping and exporting grain, and I am familiar with the practice upon the board of trade.

Whereupon Mr. Mathias asked the witness the following question:-

Q. Define a call.

A. A call is where one party, for a consideration, buys the privilege of calling a certain quantity or value of property within a specified period. It may be for twenty-four hours or it may be for a long time.

Q. In other words, a call may be said to be an agreement somewhat as follows: A offers to sell to B a thousand bushels of grain at 31 cents a bushel, and, in consideration of \$10.00, paid by B to A, A agrees to leave the offer open for five days. Would that be a call?

A. Yes, sir.

(By the COURT:)

Q. The buyer pays the money for the privilege or option which is given to him?

A. Yes, sir.

Q. Has it been the practice on the board of trade for persons engaged in the shipping of grain to deal in puts and calls?

A. Yes, sir.

Q. You may give the reasons, Mr. Peters, why it is expedient for grain shippers to deal in puts and calls.

A. Well, in the course of our regular daily business we are offering large quantities of grain to European markets every night by cable. We send out our cables, for instance, tonight, that
35 those offers are good. For instance, taking Liverpool as the basis of time on the other side, that expires at three o'clock in Liverpool, England. That, we will say, is to be nine o'clock in Chicago—nine o'clock a. m. as against three o'clock p. m. there. The market opens here at nine thirty a. m. Our representatives in Europe file their cables or acceptance not later than three p. m.; those acceptances, then, would be in our hands prior to the opening of the market. Now, in cases of any unusual disturbance such as we frequently have in foreign countries or contingencies that are

liable to happen on this side, it is a very risky proposition to offer several hundred thousand bushels of grain without any possible insurance. We term it an insurance proposition.

(By the COURT:)

Q. Without any possible insurance as to what the price will be?

A. Well, sir, I would like to state, of course, that we must offer our grain in the usual course of business at about the current market price, with the expense of delivery. We offer our grain delivered to the foreign ports. We go into the market or have been accustomed to and buy what we have always termed in our legitimate business our insurance. In addition to paying the seller of the call a sum for the privilege of calling this grain within a certain period, we pay him, as a rule, a premium over the closing price for the risk that he takes, and that premium is governed largely by the opinions of the various traders as to what the risk may be over the existing contingencies. It may be an eighth of a cent a bushel or it may be

36 a cent, or even more, and then these privileges or calls that we are discussing being good to us in the instances that I am citing in our system for any time during the open market, the following day or the following business day when we have a market. Of course there may be a holiday intervening in between, or a Sunday. Then if our acceptances have been considerable or have been small and the action of the market is such that it is saving us money to take advantage of this privilege which we have bought, we take advantage of it; otherwise we are not compelled to do it. I would like to state that we regard it on the same basis as a man who insures his cargo on the lakes, as we do against a loss by wreckage or fire; if no loss occurs, you get no insurance; if it does occur, you are insured. Now, depriving us of the privilege of handling our business as we have handled it for years has removed all possibility of buying this insurance.

(By the COURT:)

Q. As I understand you, there are always great quantities of grain for sale at the market price here in Chicago?

A. Yes, sir.

Q. And there is always a demand in Liverpool for great quantities of grain at the market price there?

A. Yes.

Q. And you telegraph on to Liverpool, as you have to do in order to carry on business with a foreign port—you telegraph on there that you will sell a certain quantity of grain at, for instance, a dollar a bushel, based upon your being able to buy it, as you think, here at ninety cents, say?

A. Yes.

Q. Now, then, you don't know whether the people in Liverpool will accept your offer or not. Now, if they do accept your offer, then you are bound to deliver the grain?

A. Yes.

37 Q. And if your offer at a dollar has been based upon the market price being ninety cents here when you made the offer, as you do not get a return back for some hours afterwards—that is, you do not receive knowledge as to whether your offer is accepted for some hours afterwards—in the meanwhile, between your cabling your offer and your getting back word of its acceptance, if grain should go up to ninety-five cents here you would make a great loss?

A. Yes.

Q. And therefore, to insure yourself against that, you pay a little something?

A. Yes, sir.

Q. For it to be delivered to you, say, at ninety cents or ninety and a fourth cents, maybe?

A. Yes.

Q. That is the reason you do it for that purpose?

A. Yes, sir.

Q. Purely as insurance?

A. Yes, sir.

Q. And you feel that you cannot do your business safely—that is, doing a large business and doing business the way it has to be done, selling in foreign markets—except you do have insurance; is that the idea?

A. Yes, sir.

By Mr. MATHIAS:

Q. How much grain does your firm ship each year?

A. Well, the shipping business fluctuates. We run during the last several years somewhere from thirty-five to forty-two million bushels.

Q. And the other large firms who are members of the board of trade do likewise, do they?

A. Yes, sir.

Q. Are any of those option contracts such as you have described ever settled on differences?

A. I don't know as I understand how you mean. Settled right on the board?

38 Q. Are they ever settled on differences—that is, if the market price of the grain has raised a cent or two or has lowered a cent or two—do you go to the person of whom you have bought the put or the call and say, "Now, there is about two cents difference in the market. You just pay me the difference and we will settle this option"?

A. No, sir.

Q. Did you ever know of such transaction being made upon the board of trade?

A. I never have known of one; no, sir.

Q. And your firm never makes any such?

A. Not to my knowledge.

(By the COURT:)

Q. I suppose in such cases as that, if the price of grain remained the same, you would simply not avail yourself of it. You would simply lose the money you had paid for the call?

A. If we did not avail ourselves of it; yes, sir.

Mr. MATHIAS:

Q. Suppose you do avail yourself of the privilege you have purchased, what is done?

A. The transaction is then made in just the same manner that it would have been made in the open board, in the pit.

Q. In other words, the grain is delivered?

A. The grain is delivered, the entry is sent to the proper department of the office, and settled through the clearing-house in the usual manner.

Q. What is the nature of the offers which you make to Liverpool and other foreign ports each night?

39 A. We simply offer firm, at a fixed price; that gives the Liverpool people nearly the entire period of their open market the following day.

Q. Well, as I understand it, it would be something like this: That it is the custom for commission men or grain dealers upon the board of trade in the evening to telegraph to a foreign port that they offer for sale, delivered at that port, a certain quantity of grain?

A. Yes.

Q. At a certain price?

A. Yes.

Q. And they give them until the next day at three o'clock, their time, or nine o'clock, Chicago time, to accept or refuse the offer. Is that the agreement?

A. Yes, sir. I may state, for instance, what an offer tonight would be, if it is proper.

Q. Very well; you may state.

A. The business with the U. K. or United Kingdom is done in quantities or loads. A load of corn is designated as four hundred eighty or eighty-six hundred bushels, so many loads. Chicago to corn at price, we will say, forty-seven C. I. F., Liverpool. C. I. F. is a term used in shipping, which means cost, insurance, and freight. That is the delivery price, late April or early May, from the sea-board, giving the seller the option of getting it the last half of April or the first half of May, because, of course, you have got to have the steamers and we have got to have time to get the grain forward from the West. Now, that offer is complete. There is nothing said in each particular cable about the time of acceptance. I would like to state, to make that clear, perhaps, that before any business transactions of any magnitude with people of foreign countries

40 we have what is called the London Corn Exchange contract. That is properly filled out to make all the special agreements, and that is subscribed to before business is finally opened, and that

provides for the answering of cables by the period I have named, so it is not necessary after that to embody that in your cable and pay the charges every day.

Q. One of the customs of the business, then, is that when you offer to sell delivered at Liverpool it is understood that the offer shall remain open until the following morning, at nine o'clock, Chicago time?

A. That is the idea; yes, sir.

Q. As I understand you, these telegrams that you say you send or these offers which you make are called firm offers?

A. Firm offers; yes, sir.

Q. And they are just the same as what we call calls, with the exception that no consideration is paid for the time to accept?

A. Practically so; it gives them the privilege of calling a certain quantity.

Q. But there is no consideration paid?

A. No consideration paid; no.

Q. Do you consider that freedom to use puts and calls in your business in the manner which you have testified is an advantage to you in your grain business?

A. It is a great necessity.

Mr. SPROGLE: I object to all this line of investigation because it does not pertain to the issue in this case, and I move that it be stricken out as immaterial and incompetent; which motion was sustained by the court; to which ruling of the court in sustaining said motion to strike out, the defendant, by his attorney, then and
41 there duly excepted.

WILLIAM S. CROSBY, produced as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

Direct examination by Mr. MATHIAS:

My name is William S. Crosby. I am in the grain business on the board of trade in Chicago, and have been a member of the board of trade since 1873. I am familiar with the operations of the clearing-house on the board of trade. The clearing-house of the board of trade is a piece of machinery the same as the clearing-house of the bank. For instance, the trade in wheat at the present time is and has been since probably last November largely for delivery in May. The volume of trade is very large. The buying and selling are constant.

Mr. SPROGLE: I want to interpose an objection here just to save the record.

The COURT: Well, let him go on.

The COURT: And let us hear what he is going to say.

A. And those transactions accumulate on the books of the commission men to a very large extent. Now, in order to avoid the risk and labor and expense of delivering, of keeping those trades open, say, until May and making delivery of them, they settle

them through the clearing-house in this way: If A has 5,000 bushels of wheat sold to B, and B has it sold back to A, they agree between them, if they please, to settle that through the clearing-house, and each pays into the clearing-house or collects from the clearing-house according to the price at which he has the property bought or sold. Further than that, if A has wheat sold to B, and B has it sold to D, and D has it sold back to A, those three people, if they choose, agree to settle it through the clearing-house, and each pays into the clearing-house what he owes between the purchase price and selling price, or he collects from the clearing-house what he is entitled to between his selling price and buying price.

The COURT: In other words, the clearing-house of the board of trade has substantially the same method which is pursued by the banks in clearing their checks?

A. Yes, sir; precisely, and for the same reason. It is a labor-saving and risk-saving device.

By Mr. MATHIAS:

Q. With what firm are you connected?

A. F. G. Logan.

Q. What is their business?

A. Commission men.

Q. Do you know what a put and call are?

A. Yes, sir; I do.

Q. Did you hear the testimony of Mr. Peters upon that subject?

A. Yes, sir.

Q. Is his testimony correct?

A. Yes, sir. I think he confused it a little bit.

Q. Now you may state what you think a call is.

A. A call is an offer to sell property for some stated delivery, which, in consideration of a certain amount of money paid, is left open a certain length of time.

Q. What is a put?

A. A put is an offer to buy property, left open a certain length of time for the acceptance of the other party, in consideration of a stated amount of money paid.

43 Q. Do you know how puts and calls are mostly dealt in on the board?

A. How they are dealt in?

Q. Yes. By what persons are puts and calls mostly dealt in?

A. Well, it would be difficult to say how they are mostly dealt in. They are dealt in by all classes of people who have interest—by shippers and traders.

Q. Do you know what a firm offer is?

A. Yes, sir.

Q. You may explain that to the court.

A. A firm offer is an offer to sell property under certain terms for a certain delivery, left open for a certain length of time.

Q. Is that in uniform use on the board of trade?

A. Yes, sir. Most of the property that is shipped out of Chicago is shipped out on firm offers.

The COURT: Let me inquire of you whether you know if it is the practice of country buyers of grain generally throughout the country, as they buy from the farmers from day to day, the amount which they pay being governed by the Chicago market price, and it taking them a day or two to get the grain which they buy in here—if it is not their practice to protect themselves on the Chicago market against the fluctuation of grain by some such deal as you speak of.

A. Yes, sir; they often buy puts. Dealers at country stations buy puts to protect themselves. It is not a universal practice, but it is very often done. It is a common practice.

Mr. MATHIAS: What is the difference between a firm offer and a call?

A. A difference in the consideration paid. On a call a consideration is paid—a definite consideration—and in a firm offer it is the prospective profit which is the consideration. That is all the difference there is.

Q. Why are puts and calls essential to *bona fide* commercial transactions upon the board of trade?

A. Well, in a general sense, they limit the risk, they reduce the risk, the same as insurance reduces the risk from fire and navigation.

Q. Are you familiar with all the transactions on the board of trade?

A. All kinds of transactions?

Q. Yes.

A. I think so; yes, sir.

Q. Did you ever know of a put or a call being settled on what is known as differences?

A. No, sir; not by ever doing it; never saw it done.

Q. That has always been against the rules of the board of trade, has it not?

A. Well, it is against the rules, but as a practice I never knew of a case where that was done.

Cross-examination by Mr. SPROGLE:

Q. Isn't it a fact, Mr. Crosby, that there is a great deal of speculative dealing in puts and calls?

A. Yes, sir; speculators both buy and sell them.

Q. If a man buy or sell an option and the market goes his way—that is, the course of the market is such as to show him a profit in his put or his call—doesn't he have to buy or sell against it in order to avail himself of his privilege?

A. Not necessarily. A shipper might buy a call—Mr. Peters might have a hundred thousand or five hundred thousand calls to-night, and tomorrow, — it was to his interest to call that property, if it was to his interest to call that property, he would call it, and he would ship the property; maybe he would not sell it at all, you know.

Q. Well, how are these gambling trades in puts and calls settled ; aren't they settled on differences ?

A. Well, now, if you define gambling to be a trade in which there is no intention to deliver the property, I simply want to say to you there was never such a thing around the board of trade ; never has been and is not now. That is where you people are all wrong and where the law is all wrong. There was never any such trade.

Q. That is your opinion ?

A. I know it is so. There never was such a trade. There is no object in doing so ; no incentive to do it, no possible incentive.

Whereupon Mr. Spragle, representing the State, moved that the court strike out all the testimony of the witness as to the method of conducting the business on the board of trade and the utility of puts and calls ; which motion the court sustained ; to which ruling of the court in sustaining said motion defendant, by his counsel, then and there duly excepted.

Whereupon, both parties having rested, the defendant, by his attorney, requested and moved the court to hold and find each and all of the following propositions of law as the law of this case, as applying to the first, second, third, fourth, fifth, sixth, and seventh counts of the indictment herein and each and every thereof :

1. That section 130 of the Criminal Code, in so far as it provides that " whoever contracts to have or give to himself or another the option to sell or buy at a future time any grain or other commodity, stock of any railroad or other company, or gold * * * shall be fined not less than \$10 nor more than \$1,000, or confined in the county jail not exceeding one year, or both," is in contravention of section 2, article 2, of the constitution of the State of Illinois, which provides that " no person shall be deprived of life, liberty or property without due process of law," and is unconstitutional and void.

2. That section 130 of the Criminal Code, in so far as it provides that " whoever contracts to have or give to himself or another the option to sell or buy at a future time any grain or other commodity, stock of any railroad or other company, or gold * * * shall be fined not less than \$10 nor more than \$1,000, or confined in the county jail not exceeding one year, or both," is in contravention of section 1, article 14, of the articles in addition to and amendment of the Constitution of the United States of America, which provides " nor shall any State deprive any person of life, liberty or property without due process of law," and is unconstitutional and void.

3. That section 130 of the Criminal Code, in so far as it provides that " whoever contracts to have or give to himself or another the option to sell or buy at a future time any grain or other commodity, stock of any railroad or other company, or gold * * * shall be fined not less than \$10 nor more than \$1,000, or confined in the county jail not exceeding one year, or both," is in contravention of section 1, article 14, of the articles in addition to and amendment of the Constitution of the United States of America, which provides

47 that "no State shall deny to any person within its jurisdiction the equal protection of the laws," and is unconstitutional and void.

4. That section 130 of the Criminal Code, in so far as it provides that "whoever contracts to have or give to himself or another the option to sell or buy at a future time any grain or other commodity, stock of any railroad or other company, or gold * * * shall be fined not less than \$10 nor more than \$1,000, or confined in the county jail not exceeding one year, or both," is unconstitutional and void.

5. That the facts proven herein do not constitute an offense contrary to the statute and against the peace and dignity of the People of the State of Illinois.

6. That the facts proven herein do not constitute an offense contrary to the statute of the State of Illinois.

7. That the facts proven herein do not constitute an offense against the peace and dignity of the People of the State of Illinois.

8. That the defendant is not guilty.

And the court, having heard the arguments of counsel, took the matter under advisement.

And be it further remembered that heretofore, to wit, upon the 26th day of March, A. D. 1900, the above cause coming on before Honorable Arba N. Waterman, one of the judges of the said court, and the court, having fully considered the arguments of counsel in the matter, refused to hold and find each and all of the following propositions of law as the law in this case as applying to the
48 first, second, third, fourth, fifth, sixth, and seventh counts of the indictment herein and each and every thereof:

1. That section 130 of the Criminal Code, in so far as it provides that "whoever contracts to have or give to himself or another the option to sell or buy at a future time any grain or other commodity, stock of any railroad or other company, or gold * * * shall be fined not less than \$10 nor more than \$1,000, or confined in the county jail not exceeding one year, or both," is in contravention of section 2, article 2, of the constitution of the State of Illinois, which provides that "no person shall be deprived of life, liberty, or property without due process of law," and is unconstitutional and void.

2. That section 130 of the Criminal Code, in so far as it provides that "whoever contracts to have or give to himself or another the option to sell or buy at a future time any grain or other commodity, stock of any railroad or other company, or gold * * * shall be fined not less than \$10 nor more than \$1,000, or confined in the county jail not exceeding one year, or both," is in contravention of section 1, article 14, of the articles in addition to and amendment of the Constitution of the United States of America, which provides "nor shall any State deprive any person of life, liberty or property without due process of law," and is unconstitutional and void.

3. That section 130 of the Criminal Code, in so far as it provides that "whoever contracts to have or give to himself or another the option to sell or buy at a future time any grain or other commodity,

stock of any railroad or other company, or gold * * * shall be fined not less than \$10 nor more than \$1,000, or confined in the county jail not exceeding one year, or both," is in contravention of section 1, article 14, of the articles in addition to and amendment of the Constitution of the United States of America, which provides that "no State shall deny to any person within its jurisdiction the equal protection of the laws," and is unconstitutional and void.

4. That section 130 of the Criminal Code, in so far as it provides that "whoever contracts to have or give himself or another the option to sell or buy at a future time any grain or other commodity, stock of any railroad or other company, or gold * * * shall be fined not less than \$10 nor more than \$1,000, or confined in the county jail not exceeding one year, or both," is unconstitutional and void.

5. That the facts proven herein do not constitute an offense contrary to the statute and against the peace and dignity of the People of the State of Illinois.

6. That the facts proven herein do not constitute an offense contrary to the statute of the State of Illinois.

7. That the facts proven herein do not constitute an offense against the peace and dignity of the People of the State of Illinois.

8. That the defendant is not guilty.

as has been requested on behalf of the defendant, by his attorney; to which ruling of the court in refusing to hold and find each and all of the said propositions of law as the law in this case, as applying to the first, second, third, fourth, fifth, sixth, and seventh counts of the indictment herein and each and every thereof, the defendant, by his attorney, then and there duly excepted.

50 Whereupon the said court found the defendant guilty as charged; to which said finding of the court the defendant, by his counsel, then and there duly excepted and moved the court for a new trial in the words and figures as follows, to wit:

STATE OF ILLINOIS, }
County of Cook, } ss:

In the Criminal Court of Cook County.

STATE }
v. } 3221.
BOOTH. }

Comes now the defendant, by Lee D. Mathias, his attorney, and moves the court for a new trial herein, and as causes therefor says:

1st. The judgment of the court is contrary to the law.

2nd. The findings of the court are contrary to the law.

3rd. The court erred in sustaining the motion to strike out the testimony of Homer H. Peters or any part thereof.

4th. The court erred in striking out the testimony of William S. Crosby or any part thereof.

5th. The court erred in overruling defendant's motion to quash the indictment herein and each and every count thereof.

6th. The court erred in failing to hold each and all of the propositions of law as requested by the defendant as the law of this case.

For all of which errors the defendant prays for a new trial.

LEE D. MATHIAS,

Attorney for Defendant.

51 which motion the court then and there overruled; to which ruling of the court in so overruling the said motion for a new trial the defendant, by his counsel, then and there duly excepted.

And thereupon the defendant, by his counsel, moved the court in arrest of judgment in the words and figures as follows, to wit:

STATE OF ILLINOIS, {
County of Cook, } ss:

In the Criminal Court of Cook County.

STATE OF ILLINOIS }
v. }
ALFRED V. BOOTH. }

Comes now the defendant, by Lee D. Mathias, his attorney, and moves the court to arrest the judgment herein for the following reasons, to wit:

1. That the court has no jurisdiction herein.

2. That the alleged statute upon which the indictment herein is based is in contravention of section 2, article 2, of the constitution of the State of Illinois and is unconstitutional and void.

3. That the alleged statute upon which the indictment herein is based is in contravention of section 1, article 14, of the articles in addition to and amendment of the Constitution of the United States of America, which provides "nor shall any State deprive any
52 person of life, liberty, or property without due process of law," and is unconstitutional and void.

4. That the alleged statute upon which the indictment herein is based is in contravention of section 1, article 14, of the articles in addition to and amendment of the Constitution of the United States of America, which provides that "no State shall deny to any person within its jurisdiction the equal protection of the laws," and is unconstitutional and void.

5. That the indictment herein charges no offense contrary to the statutes of the State of Illinois.

6. That the indictment herein charges no offense against the peace and dignity of the People of the State of Illinois.

7. That the indictment herein charges no offense contrary to the statute and against the peace and dignity of the People of the State of Illinois.

LEE D. MATHIAS,

Attorney for Defendant.

Which motion the court then and there overruled; to which ruling of the court in so overruling the said motion in arrest of judgment the defendant, by his counsel, then and there duly excepted.

Whereupon the court entered judgment on his findings herein and adjudged that the defendant be fined in the sum of one hundred dollars and pay all the costs in these proceedings; to which order and judgment the defendant, by his counsel, then and there duly excepted.

And forasmuch as the matters above set forth do not fully appear of record the defendant tenders this his bill of exceptions, and prays that the same may be signed and sealed by the judge of this court, pursuant to the statute in such case made, which is done accordingly this 31st day of March, A. D. 1900.

A. N. WATERMAN, [SEAL.]

Judge of the Criminal Court of Cook County.

O K.

NATH. E. TAYLOR,
Sp'l Counsel for People.

O K.

LEE D. MARTIN.

O K.

CHARLES S. DENEEN,
State's Attorney.
HOWARD O. SPROGLE,
Ass't State's Attorney.

54 STATE OF ILLINOIS, }
County of Cook, } ss :

I, Patrick J. Cahill, clerk of the criminal court of Cook county, in said county and State, do hereby certify the above and foregoing to be a true, perfect, and complete copy of the record in a certain cause lately pending in said court, wherein The People of the State of Illinois were plaintiffs and Alfred V. Booth defendant.

[SEAL.] Witness Patrick J. Cahill, clerk of said court, and the seal thereof, at Chicago, in said county, this 31st day of March, A. D. 1900.

PATRICK J. CAHILL, *Clerk.*

55

In the Supreme Court of Illinois.

ALFRED V. BOOTH, Plaintiff in Error, }

v.

PEOPLE OF THE STATE OF ILLINOIS, Defendants in Error. }

Assignment of Errors.

Comes now the plaintiff in error, by Lee D. Mathias, his attorney, and says that manifest error intervenes in the record herein in this, to wit:

1. The court below erred in overruling the motion to quash the indictment herein and each and every count thereof.

2. The court below erred in striking out the testimony of Homer H. Peters herein.

3. The court below erred in striking out the testimony of William S. Crosby herein as to the method of conducting business on the board of trade and the utility of puts and calls.

4. The court below erred in refusing to hold each and all of the following propositions of law as the law in this case as applying to the first, second, third, fourth, fifth, sixth, and seventh counts of the indictment herein and each and every thereof, as requested by the plaintiff in error, defendant below :

1. That section 130 of the Criminal Code, in so far as it provides that " whoever contracts to have or give to himself or another the option to sell or buy at a future time any grain or other commodity, stock of any railroad or other company, or gold * * * shall be fined not less than \$10 nor more than \$1,000, or confined in
56 the county jail not exceeding one year, or both," is in contravention of section 2, article 2, of the constitution of the State of Illinois, which provides that " no person shall be deprived of life, liberty or property without due process of law," and is unconstitutional and void.

2. That section 130 of the Criminal Code, in so far as it provides that " whoever contracts to have or give to himself or another the option to sell or buy at a future time any grain or other commodity, stock of any railroad or other company, or gold * * * shall be fined not less than \$10 nor more than \$1,000, or confined in the county jail not exceeding one year, or both," is *is* in contravention of section 1, article 14, of the articles in addition to and amendment of the Constitution of the United States of America, which provides " nor shall any State deprive any person of life, liberty or property without due process of law," and is unconstitutional and void.

3. That section 130 of the Criminal Code, in so far as it provides that " whoever contracts to have or give to himself or another the option to sell or buy at a future time any grain or other commodity, stock of any railroad or other company, or gold * * * shall be fined not less than \$10 nor more than \$1,000, or confined in the county jail not exceeding one year, or both," is in contravention of section 1, article 14, of the articles in addition to and amendment of the Constitution of the United States of America, which provides that " no State shall deny to any person within its jurisdiction the equal protection of the laws," and is unconstitutional and
57 void.

4. That section 130 of the Criminal Code, in so far as it provides that " whoever contracts to have or give to himself or another the option to sell or buy at a future time any grain or other commodity, stock of any railroad or other company, or gold * * * shall be fined not less than \$10 nor more than \$1,000, or confined in the county jail not exceeding one year, or both," is unconstitutional and void.

5. That the facts proven herein do not constitute an offense con-

trary to the statute and against the peace and dignity of the People of the State of Illinois.

6. That the facts proven herein do not constitute an offense contrary to the statute of the State of Illinois.

7. That the facts proven herein do not constitute an offense against the peace and dignity of the People of the State of Illinois.

8. That the defendant is not guilty.

5. The court below erred in refusing to find and hold the following proposition of law as the law of this case as applying to the first, second, third, fourth, fifth, sixth, and seventh counts of the indictment herein and each and every thereof, as requested by the defendant:

That section 130 of the Criminal Code, in so far as it provides that "whoever contracts to have or give to himself or another the option to sell or buy at a future time any grain or other commodity, stock of any railroad or other company, or gold * * * shall be fined not less than \$10 nor more than \$1,000, or confined in the
58 county jail not exceeding one year, or both," is in contravention of section 2, article 2, of the constitution of the State of Illinois, which provides that "no person shall be deprived of life, liberty, or property without due process or law," and is unconstitutional and void.

6. The court below erred in refusing to find and hold the following proposition of law as the law of this case as applying to the first, second, third, fourth, fifth, sixth, and seventh counts of the indictment herein and each and every thereof, as requested by the defendant:

That section 130 of the Criminal Code, in so far as it provides that "whoever contracts to have or give to himself or another the option to sell or buy at a future time any grain, or other commodity, stock of any railroad, or other company, or gold * * * shall be fined not less than \$10 nor more than \$1,000, or confined in the county jail not exceeding one year, or both," is in contravention of section 1, article 14, of the articles in addition to and amendment of the Constitution of the United States of America, which provides "nor shall any State deprive any person of life, liberty or property without due process of law," and is unconstitutional and void.

7. The court below erred in refusing to find and hold the following proposition of law as the law of this case as applying to the first, second, third, fourth, fifth, sixth, and seventh counts of the indictment herein and each and every thereof, as requested by the defendant:

That section 130 of the Criminal Code, in so far as it provides that
59 "whoever contracts to have or give to himself or another the option to sell or buy at a future time any grain or other commodity, stock of any railroad, or other company, or gold * * * shall be fined not less than \$10 nor more than \$1,000, or confined in the county jail not exceeding one year, or both," is in contravention of section 1, article 14, of the articles in addition to and amendment of the Constitution of the United States of America, which provides

that "no State shall deny to any person within its jurisdiction the equal protection of the laws," and is unconstitutional and void.

8. The court below erred in refusing to find and hold the following proposition of law as the law of this case as applying to the first, second, third, fourth, fifth, sixth, and seventh counts of the indictment herein and each and every thereof, as requested by the defendant:

That section 130 of the Criminal Code, in so far as it provides that "whoever contracts to have or give to himself or another the option to sell or buy at a future time any grain or other commodity, stock of any railroad, or other company, or gold * * * shall be fined not less than \$10 nor more than \$1,000, or confined in the county jail nor exceeding one year, or both," is unconstitutional and void.

9. The court below erred in refusing to find and hold the following proposition of law as the law of this case as applying to the first, second, third, fourth, fifth, sixth, and seventh counts of the indictment herein and each and every thereof, as requested by the defendant:

That the facts proven herein do not constitute an offense contrary to the statute and against the peace and dignity of the People of the State of Illinois.

10. The court below erred in refusing to find and hold the following proposition of law as the law of this case as applying to the first, second, third, fourth, fifth, sixth, and seventh counts of the indictment herein and each and every thereof, as requested by the defendant.

That the facts proven herein do not constitute an offense contrary to the statute of the State of Illinois.

11. The court below erred in refusing to find and hold the following proposition of law as the law of this case as applying to the first, second, third, fourth, fifth, sixth, and seventh counts of the indictment herein and each and every thereof, as requested by the defendant:

That the facts proven herein do not constitute an offense against the peace and dignity of the People of the State of Illinois.

12. The court below erred in refusing to find and hold the following proposition of law as the law of this case as applying to the first, second, third, fourth, fifth, sixth, and seventh counts of the indictment herein and each and every thereof, as requested by the defendant:

That the defendant is not guilty.

13. The court erred in overruling the motion of the defendant for a new trial herein.

14. The court below erred in overruling the motion of the defendant in arrest of judgment herein.

15. The court below erred in finding the defendant guilty as charged.

16. The court below erred in finding the defendant guilty as charged and assessing a fine of one hundred dollars and costs against him.

17. The court below erred in adjudging that the defendant
 61 pay a fine of one hundred dollars and the costs herein.

Wherefore the plaintiff in error prays that the decision of
 the court below in this case be in all things reversed.

LEE D. MATHIAS,

Attorney for Plaintiff in Error.

62 And afterwards, to wit, on the thirteenth day of April, A. D.
 1900, certain proceedings were had in said court and orders
 entered of record in the words and figures following, viz:

ALFRED V. BOOTH

vs.

THE PEOPLE OF THE STATE OF ILLINOIS.

} No. 1341. Error to Crim-
 inal Court, Cook.

Now, on this day, come the parties hereto, and this being one of
 the days set apart for the call of the docket under the rules of this
 court, and it appearing to the court that — —, appellant, hath
 filed herein a duly certified transcript of the record and proceedings
 of the court below, together with printed abstracts thereof, and briefs
 and arguments of counsel in support of the errors assigned herein,
 and entered motion to reverse the judgment and remand said cause
 and for costs, and the said appellee, — —, having entered motion
 to affirm said judgment and for costs and *procedendo*, and said
 motions being taken under advisement for final hearing, and the
 clerk of this court reporting that said cause is now ready to be
 taken —, and said cause is here submitted for the consideration and
 judgment of the court:

Therefore it is ordered by the court that this cause be, and the
 same is hereby, taken under advisement.

63 And afterwards, to wit, on the fourteenth day of April, A. D.
 1900, certain proceedings were had in said court and orders
 entered of record in the words and figures following, viz:

ALFRED V. BOOTH

vs.

THE PEOPLE OF THE STATE OF ILLINOIS.

} 1341. Error to Criminal
 Court, Cook.

And now, on this day, on motion of the attorney general, it is
 ordered by the court that the time to file briefs herein be, and the
 same is hereby, extended five days.

64 At a supreme court begun and held at Springfield on
 Tuesday, the fifth day of June, in the year of our Lord one
 thousand nine hundred, within and for the State of Illinois.

Present: Carroll C. Boggs, chief justice; Alfred M. Craig, justice;
 Jacob W. Wilkin, justice; Joseph N. Carter, justice; Benjamin D.
 Magruder, justice; Jesse J. Phillips, justice; James H. Cartwright,
 justice; Edward C. Akin, attorney general; Charles M. Woods,
 sheriff.

Attest: CHRISTOPHER MAMER, *Clerk.*

Be it remembered, to wit, on the twenty-first day of June, A. D. 1900, the same being in vacation after the term of court aforesaid, the following proceedings were by said court had and entered of record, to wit:

ALFRED V. BOOTH	}	No. 1341. Appeal from Criminal Court, Cook.
p. THE PEOPLE OF THE STATE OF ILLINOIS.		

And now, on this day, this cause having been argued by counsel and the court having diligently examined and inspected as well the record and proceedings aforesaid as the matters and things therein assigned for error and being now sufficiently advised of and concerning the premises, for that it appears to the court now here that neither in the record and proceedings aforesaid nor in the rendition of the judgment aforesaid is there anything erroneous, vicious, or defective, and that in that record there is no error: Therefore it is considered by the court that the judgment aforesaid be affirmed in all things and stand in full force and effect, notwithstanding the said matters and things therein assigned for error; and it is further considered by the court that the said appellees recover of and from the said appellant their costs by them in this behalf expended, and that they have execution therefor.

65 And upon the entering of said order there was filed in the office of the clerk of said court the opinion of the court in the words and figures following:

ALFRED V. BOOTH	}	1341. Appeal from Criminal Court, Cook.
vs. THE PEOPLE OF THE STATE OF ILLINOIS.		

Mr. Chief Justice Boggs delivered the opinion of the court:

The plaintiff in error was convicted and adjudged to pay a fine of \$100 under an indictment which charged that he, on the 16th day of August, 1899, in said county of Cook, in the State of Illinois aforesaid, unlawfully did contract in writing with the Weare Commission Company, a corporation, to then and there have to himself, to wit, to said Alfred V. Booth, a certain option to buy at a future time, to wit, on or before the 26th day of August, in the year of our Lord one thousand eight hundred and ninety-nine, a certain commodity, to wit, grain, to wit, 10,000 bushels of corn, from the said Weare Commission Company, a corporation, as aforesaid; which said contract is in the words and figures as follows, to wit:

"Alfred V. Booth, grain and provision broker.

10 Weare Com. Co.

CHICAGO, Aug. 16, 1899.

Sep. corn, 1899. C., 31½. Paid.

Good till close of 'change, Sat., Aug. 26, 1899.

WEARE C. CO.
J. J. C."

66 contrary to the statute and against the peace and dignity of the same People of the State of Illinois. The evidence explained the writing set out in the indictment to constitute an agreement giving defendant the option to buy 10,000 bushels of corn at thirty-one and one-half cents per bushel from the Weare Commission Company at any time within ten days after the 16th day of August, 1899. The allegations of fact set forth in the indictment were fully established by the evidence.

Counsel for plaintiff in error contends it did not appear from the proof the plaintiff in error entered into the contract, with any other than the *bona fide* intention to accept the corn if he desired to avail himself of the benefit of the contract, or that he had any intent, when the contract was executed, to accept compliance with the contract merely by way of the payment to him of the difference between the contract price and the market price of the corn at the time of the maturity of the contract, and further contends it appears from the evidence that the contract was in fact consummated by the actual delivery of the grain to him. Counsel for defendant in error do not question the position thus taken by counsel for plaintiff in error as to the facts proven on the hearing. Counsel for plaintiff in error admits the facts so charged in the indictment and established by the evidence in support thereof justified the conviction under the provisions of section 130 of the Criminal Code, as interpreted by this court in *Schneider v. Turner*, 130 Ill., 28, but insists, first, said section 130 is in contravention of the provision incorporated in the Constitution of the United States, and also in the constitution of the State of Illinois, that "no person shall be deprived of life, liberty

67 or property without due process of law," and, second, that said section is violative of the provision of section 1 of the fourteenth amendment of the Constitution of the United States which provides that no State shall "deny to any person within its jurisdiction the equal protection of the laws." We will consider these points in order as made by counsel.

First, Liberty and property, as used in said constitutional provisions, include the right to acquire property, and that means and includes the privilege of contracting and making and enforcing contracts. (*Fraser v. People*, 141 Ill., 171.) A citizen cannot be deprived of an attribute of property, like the right to make a reasonable contract with reference to property, without "due process of law." Due process of law is a general public law of the land. (*Millett v. People*, 117 Ill., 294; *Ritchie v. People*, 155 *id.*, 98.) The General Assembly of the State of Illinois possesses full plenary power of legislation, except in so far as its powers are limited by the State or Federal Constitution. The State inherently possesses and the General Assembly may lawfully exercise such power of restraint upon private rights as may be found to be necessary and appropriate to promote the health, comfort, safety, and welfare of society. This power is known as the police power of the State. In the exercise of this power the General Assembly may, by valid enactments—*i. e.*, "due process of law"—prohibit all things hurtful to the comfort, safety, and welfare of society, even though the prohibition invade

the right of liberty or property of an individual. (18 Am. & Eng. Ency. of Law, 739, 740; *Town of Lake View v. Rose Hill Cemetery Co.*, 70 Ill., 191.) An enactment to have that effect and be valid must be an appropriate measure for the promotion of the comfort, safety, and welfare of society. It must be, in fact, a police regulation. Courts are authorized to interfere and declare a statute unconstitutional or not the "law of the land" if it conflicts with the constitutional rights of the individual and does not relate to or is not an appropriate measure for the promotion of the comfort, safety, and welfare of society. (*Ritchie v. People*, *supra*.) With the wisdom, policy, or necessity for such an enactment courts have nothing to do. But what are the subjects of police powers and what are reasonable regulations are judicial questions, and the courts may declare enactments which, under the guise of the police power, go beyond the great principle of securing the safety or welfare of the public, to be invalid.

Laws for the suppression of all forms of gambling have, without exception, so far as we are advised, been regarded by the courts and law-writers as a proper exercise of the police power. This is conceded by counsel for plaintiff in error, but his contention is the contract for entering into which the plaintiff in error was convicted is neither illegal nor within itself immoral—is neither void nor voidable under principles of the common law; that this court so declared in *Schneider v. Turner*, *supra*, and that it is not within the power of the State, in virtue of the police power, to deprive a citizen of the right guaranteed by the constitutions of the United States and of the State of Illinois, to enter into a contract which is not within itself harmful, immoral, or injurious to the health, morals, or safety of the public. The proposition is, a contract which within itself is not harmful, immoral, or illegal and which constitutes a right of property or liberty, within the meaning of those words as employed in the organic law of the Federal and State governments, cannot be denounced as illegal in the exercise of the police power of the State. This would be to place a limitation upon the police power which might greatly impair its usefulness and often render its proper exercise entirely futile. It would restrict its operation to declaring that illegal which was already illegal. As we have hereinbefore said, it is not without the power of the General Assembly, in the proper exercise of the police power, by an enactment otherwise valid, to declare that unlawful which was theretofore lawful, even if the act so condemned be an attribute of the right of liberty or property guaranteed to the citizen by the constitutional provisions under consideration. The language of the constitutional provision is so chosen as to recognize the right of the State to deprive a citizen of life, liberty, or property by "due process of law." Due process of law is synonymous with "law of the land;" hence the law of the land may expressly prohibit and make criminal the doing of an act which, in the absence of such law of the land, would constitute a liberty or property right within the meaning of the Constitution, even though such act be not within itself immoral.

In *Magner v. People*, 97 Ill., 320, it was urged that certain provisions of the then existing game laws of the State which declared it unlawful for any one to have in his possession wild fowl or birds of the kind designed to be protected by the statute which had been lawfully taken or killed in another State were in contravention of clause 8 of article 1 of the Constitution of the United States, which confers upon Congress the power to regulate commerce among the several States. It was there held that the object of the statute was the protection of the game therein mentioned, and that the prohibition of "all possession and sales" of such game would tend to their protection and thereby advance the ends to be secured by the legislation, and the conviction of the plaintiff in error, *Magner*, of the offense of having quail in his possession which had been killed in the State of Kansas and sold by the said *Magner* in this State was upheld, and it was there said (p. 331): "This is but one among many instances to be found in the law where acts which in and of themselves alone are harmless enough are condemned because of the facility they otherwise offer for a cover or disguise for the doing of that which is harmful."

The practice of gambling on the market prices of grain and other commodities is universally recognized as a pernicious evil, and that the suppression of such evil is within the proper exercise of the police power has been too frequently declared to be open to discussion. The evil does not consist in contracts for the purchase or sale of grain to be delivered in the future, in which the delivery and acceptance of the grain so contracted for is *bona fide* contemplated and intended by the parties, but in contracts by which the parties intend to secure, not the article contracted for, but the right or privilege of receiving the difference between the contract price and the market price of the article. The object to be accomplished by the legislation under consideration is the suppression of contracts of the latter character, which are in truth mere wagers as to the future market price of the article or commodity which is the subject-matter of the wager. Clearly a contract which gives to one of the contracting parties a mere privilege to buy corn but does not bind him to accept and pay for it is wanting in the elements of good faith to be found in a contract of purchase and sale where both parties are bound, and offers a more convenient cover and disguise for mere wagers on the price of grain than contracts which create the relation of vendor and vendee. Such contracts are in the nature of wagers, that contracted for being the mere privilege to buy the grain should its market value prove to be greater than the price fixed in the contract for such privilege. The prohibition of the right to enter into contracts which do not contemplate the creation of an obligation on the part of one of the contracting parties to accept and pay for the commodity which is the purported subject-matter of the contract, but only to invest him with the option or privilege to demand, the other contracting party shall deliver him the grain if he desires to purchase it, tends materially to the suppression of the very evil of gambling in grain options which it was the legislative intent to extirpate, for the reason such evil injuriously affected the

welfare and safety of the public. The denial of the right to make such contracts tended directly to advance the end the legislature had in view and was not an inappropriate measure of attack on the evil intended to be eradicated. So far as that point is concerned, the act must be deemed a valid law of the land, and as such must be enforced, though it infringe in a degree upon the property rights of citizens. To that extent private right must be deemed secondary to the public good.

Second. Nor do we think the enactment in question denies to any person the equal protection of the law. Its penalties are directed against all persons and classes of persons who offend against its provisions. It is true it does not prohibit contracts for options to buy or sell, or the purchase or sale on future delivery of all kinds and classes of property, nor was it necessary to the validity of the act it should reach and prohibit all contracts of that character.

72 The remedy need only be as comprehensive as the evil the law designed to remove. In considering as to the propriety of adopting the enactment and as to the necessary scope of the proposed legislation, it is fair to assume it was present in the legislative mind that the proposed prohibition of the right to contract was an infringement upon the rights of property and liberty of the individual, and that it was the legislative design to trench only in the slightest possible degree upon private and individual right, and for that reason the act was so framed as to restrict the operation thereof to transactions in such kinds and character of property, commodities, and securities as had been made the subject of gambling or wagering contracts, and out of which grew the evil which threatened the welfare and safety of the public, and to place no restraints upon contracts which, though of like character of those which were prohibited, had not been employed as a means of gambling. Counsel insist contracts to have or give options to buy or sell other articles, commodities, or securities than those specified may be lawfully made, but do not suggest that the practice had grown up of contracting to have or give options to be settled merely by way of "differences" in any articles or commodities other than those comprehended within the statute. It is not indispensable, in order to be constitutional, the section should embrace all kinds of personal property, whether such kinds of personal property had usually or commonly been the subject of option dealing or not. It is sufficient if the selection of the articles and property mentioned in the section is based on reasonable and just grounds of difference, and the prohibition comprehends all kinds of property within the relations and circumstances which constitute the distinction, and extends equally to every citizen and all classes of citizens, and denies to do one a privilege which another is permitted

73 under like circumstances to exercise or employ. The prohibition need not embrace all contracts for options to buy or sell, but only all of such contracts as lie at the root of the evil which threatens the public safety and welfare.

We think the enactment the valid law of the land. The judgment is affirmed.

Judgment affirmed.

74 And afterwards, to wit, on the 22nd day of October, A. D. 1900, there was filed in the office of the clerk of said court a certain petition for writ of error; which said petition and endorsement is in the words and figures following:

75 UNITED STATES OF AMERICA, ss:

In the Supreme Court of the United States.

ALFRED V. BOOTH, Plaintiff in Error,	}	Petition for Writ of Error.
vs.		
PEOPLE OF THE STATE OF ILLINOIS, Defendant in Error.		

Comes now Alfred V. Booth, plaintiff in error, and says that on or about the twenty-first day of June, A. D. 1900, the supreme court of Illinois entered an order sustaining the judgment of the criminal court of Cook county, Illinois, in this cause; in which order and the proceedings had thereunder certain errors were committed to the prejudice of the plaintiff in error; all of which will in detail appear from the assignment of errors which is filed with this petition.

Wherefore this petitioner prays that a writ of error may issue from this court in his behalf to the supreme court of Illinois for the correction of errors so complained of, and that a transcript of record, proceedings, and papers in this cause there remaining may be sent to this court.

LEE D. MATHIAS,
Attorney for Plaintiff in Error.

Allowed.

H. B. BROWN,
*Associate Justice of the Supreme Court
of the United States.*

October 17, 1900.

76 And afterwards, to wit, on the 22nd day of October, A. D. 1900, there was filed in the office of the clerk of said court a certain bond; which said bond is in the words and figures following:

77 (Copy.)

UNITED STATES OF AMERICA, ss:

In the Supreme Court of the United States.

ALFRED V. BOOTH, Plaintiff in Error,	}	Bond.
v.		
THE PEOPLE OF THE STATE OF ILLINOIS, Defendant in Error.		

Know all men by these presents that we, Alfred V. Booth, as principal, and The United States Fidelity and Guaranty Company, as surety, are held and firmly bound unto the People of the State of Illinois, defendant in error, above named, in the sum of

five hundred dollars, to be paid to the said People of the State of Illinois; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our successors, representatives, and assigns, firmly by these presents.

Sealed with our seals and dated the fourteenth day of September, A. D. 1900.

Whereas the above-named plaintiff in error, Alfred V. Booth, has sued out a writ of error from the Supreme Court of the United States to reverse the judgment in the above-entitled cause by the supreme court of the State of Illinois:

Now, therefore, the condition of this obligation is such that if the above-named Alfred V. Booth shall prosecute said writ to effect and answer all costs and damages if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

[SEAL.] A. V. BOOTH. [SEAL.]
THE UNITED STATES FIDELITY AND
GUARANTY COMPANY,
By B. H. COULSLING, *Attorney-in-fact.*

Approved by—

H. B. BROWN,

*Associate Justice of the Supreme Court
of the United States.*

78 UNITED STATES OF AMERICA, ss:

In the Supreme Court of the United States.

ALFRED V. BOOTH, Plaintiff in Error,	}	Assignment of Errors.
vs.		
PEOPLE OF THE STATE OF ILLINOIS, Defendant in Error.		

The plaintiff in error in this action, in connection with his petition for a writ of error, makes the following assignment of errors which he avers occurred in the supreme court of Illinois upon the hearing of this cause, to wit:

First. The court erred in refusing to hold that section 130 of the Criminal Code of Illinois, in so far as it provides that "whoever contracts to have or give to himself or another the option to sell or buy at a future time any grain, or other commodity, stock of any railroad, or other company, or gold * * * shall be fined not less than \$10 nor more than \$1,000, or confined in the county jail not exceeding one year, or both," is in contravention of section 1, article 14, of the articles in addition to and amendment of the Constitution of the United States of America, which provides, "nor shall any State deprive any person of life, liberty, or property without due process of law," and is unconstitutional and void.

Second. The court erred in refusing to hold that section 130 of the Criminal Code of Illinois, in so far as it provides that "whoever contracts to have or give to himself or another the option to sell or

buy at a future time any grain, or other commodity, stock of any railroad, or other company, or gold * * * shall be fined not less than \$10 nor more than \$1,000, or confined in the county jail not exceeding one year, or both," is in contravention of section 1, article 14, of the articles in addition to and amendment of the Constitution of the United States of America, which provides that "no State shall deny to any person within its jurisdiction the equal protection of the laws," and is unconstitutional and void.

Third. The court erred in refusing to hold that section 130 of the Criminal Code of Illinois, in so far as it provides that "whoever contracts to have or give to himself or another the option to sell or buy at a future time any grain or other commodity, stock of any railroad, or other company, or gold * * * shall be fined not less than \$10 nor more than \$1,000, or confined in the county jail not exceeding one year, or both," is unconstitutional and void.

Wherefore the plaintiff in error prays that the decree and order of said court affirming the judgment of the criminal court of Cook county, Illinois, be in all things reversed and set aside.

LEE D. MATHIAS,
Attorney for Plaintiff in Error.

Endorsed on cover: File No., 17,979. Illinois supreme court. Term No., 494. Alfred V. Booth, plaintiff in error, *vs.* The People of the State of Illinois. Filed November 26, 1900.